Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In The Supreme Court of the United States

October Term, 1977

No. 77-355

Norman J. Bernstein, Husband, Petitioner

v.

State of Florida
Raymond E. Rhodes, Clerk and Individually
Alban E. Brooke
Donald S. Reisman
Marguerite H. Bernstein, Wife

Eldad W. Brophy, Husband, Petitioner

v.

State of New Hampshire
Graper & Swanson,
Professional Association and as Individuals
Ann Brophy, Wife

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Londonderry, Vermont 05148

ELDAD W. BROPHY, Pro Se, Esq.
YORK, MAINE 03909
~~Counsel for~~ *Petitioners*

IN THE
SUPREME COURT OF THE UNITED STATES

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State of Florida
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State of New Hampshire
Graper & Swanson,
Professional Association and as Individuals
Ann Brophy, Wife

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Norman J. Bernstein, Husband and Eldad W. Brophy, Husband, the Petitioners herein, pray that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Second Circuit on June 7, 1977.

A. OPINIONS BELOW

1. The Judgment in the Bernstein case (File No. 77-7085) of the United States Court of Appeals dated and filed June 7, 1977 is printed as Appendix A hereto.

2. The Judgment in the Brophy case (File No. 77-7154) of the United States Court of Appeals dated and filed June 7, 1977 is printed as Appendix B hereto.

3. The Memorandum and Order of the United States District Court for the District of Vermont, in the Bernstein case, dated February 1, 1977 (File No. 76-212) iis printed as Appendix C hereto.

4. The Memorandum and Order of the United States District Court for the District of Vermont in the Brophy case dated February 1, 1977 (File No. 76-224) is printed as Appendix D hereto.

B. JURISDICTION

1. The judgment of The United States Court of Appeals was entered on June 7, 1977. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(a).

C. QUESTIONS PRESENTED

Bernstein Case

1. Whether it is lawful and constitutional for a Florida Court to grant a divorce to the wife of a "Born Again" Hebrew-Christian, not present at the Hearing, who had prior thereto, Moved the Court to Order spiritual counselling for the 18 year marriage: —

— WHERE the parties resided in Connecticut and Vermont for all but 6 months of their married life

— WHERE the Court totally ignored the Counselling Motion

— WHERE the clerk of the Appellate Court of Florida was rude and obstructive in the course of the petitioner's appeal

— WHERE petitioner's Florida Counsel, admittedly on his own, allowed the Appeal time to lapse

— WHERE the Florida Courts, Judges, and Lawyers are insensitive to the sanctity of the marital relationship and have no wisdom or compassion to handle troubled marriages, and

— WHERE the divorce laws of Florida are anti-Christian and deprive the petitioner of the free exercise of his religion in which Husband's Lord - Jesus Christ - does NOT make any allowance for any document which will dissolve a marriage for any cause.

2. IN SUMMARY, the vital and far-reaching Question here presented is whether this Country — the United States of America — a Nation founded by God and avowedly under God — can permit State Courts to grant divorces ("quickie", "no-fault" or otherwise) in direct opposition to the Judeo-Christian Commandment and Fundamental Law that Divorce is Ungodly, abhorrent, destructive and a threat to the very foundation and well being of this Country.

Brophy Case

3. Whether it is lawful for a New Hampshire Court to grant a divorce to the wife of a "Born Again" Christian Husband in a marriage of some 18 years where 4 children had been born to this couple, in a swift and summary procedure of about 3 months from the time of service to the issuance of the decree.

4. Whether for reasons similar to the Bernstein case (paragraphs 1 & 2 supra), such a divorce violates the Fundamental Rights of said Husband, Wife and Children.

D. CONSITUTIONAL AND STATUATORY PROVISIONS INVOLVED

1. First Amendment to the U. S. Constitution.

2. Fourteenth Amendment to the U. S. Constitution.

3. The Civil Rights Acts of the United States.

4. The Holy Bible — God's Eternal Laws (see Appendix E)

E. STATEMENT OF THE CASE

1. The case is summarized in the Memorandum and Order of the District Court - Appendix B herein.

2. The Bernstein case is complex, involves 5 counts and 42 paragraphs. The Summary Dismissal by the District Court constitutes a personal and ultimately a national tragedy.

3. Bernstein's "judicial treatment" by the Florida Judicial System constitutes a personal and ultimately a national tragedy.

4. The Brophy case has the additional element of the involvement of 4 children who shall suffer the loss of a Christian home headed by the natural father and one of the reasons God abhors divorce as stated in the Holy Bible, Book of Malachi - Chapter 2, Verse 15.

F. THE RULINGS BELOW

The District Court cited case authority which is outdated, non-applicable or which should be overruled in the face of this national debacle of ever mounting divorces (1 million or more in 1975!) . . .

For Example:

1. Ex Parte Young - a 1908 case - is of no pertinency in this time of mounting national crisis.

2. Edelman v Jordan 415 U.S. 651 should be overturned. See Douglas dissent therein.

3. The cases cited to protect the Clerk of the Florida Court are not cogent or persuasive or applicable.

4. The alleged jurisdictional deficiencies and that of process are not practical and real to this vital case. The case is **in fact** one of Norman and Marguerite Bernstein, Husband and Wife v. the State of Florida. Similarly it is Mr. and Mrs. Eldad W. Brophy and Family v. the State of New Hampshire.

5. The 1859 Barber case and the 1877 Pennoyer v. Neff case do not in any way pertain to the America of 1977 where the assult on the family and the sanctity of Marriage is unparalleled in our 200-year history.

G. REASONS FOR GRANTING THE WRIT

1. The very survival of America.

2. The recognizing by the Judiciary that we are still a Nation Under God, and that God's Laws on Marriage and Divorce are still vital and necessary.

3. The alleviating of the unbearable pain caused by the tearing of one's very FLESH by the Courts in granting a divorce.

4. The preservation of a Marriage is a FUNDAMENTAL RIGHT.

CONCLUSION

Wherefore, petitioners respecfully pray that a Writ of Certiorari be granted.

Dated at Londonderry, Vermont this 30th day of August, 1977.

NORMAN J. BERNSTEIN, Husband
ELDAD W. BROPHY, Husband
Petitioners

~~by~~

~~Norman J. Bernstein,~~ Esq.

_____

~~Their Counsel~~

Appendix A

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of June one thousand nine hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN,
Chief Judge.

HON. ROBERT P. ANDERSON

HON. WALTER R. MANSFIELD,
Circuit Judges,

NORMAN J. BERNSTEIN, Husband,
Plaintiff-Appellant,

v.

STATE OF FLORIDA, RAYMOND E. RHODES, Clerk and Individually, ALBAN E. BROOKE, DONALD S. REISMAN, MARGUERITE H. BERNSTEIN, Wife,
Defendants-Appellees.

77-7085

77-7085

Appeal from the United States District Court for the District of Vermont.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the basis of the memorandum opinion of James S. Holden, J., dated February 1, 1977.

Irving R. Kaufman

Robert P. Anderson

Walter R. Mansfield

Appendix B

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of June one thousand nine hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN,
Chief Judge.

HON. ROBERT P. ANDERSON

HON. WALTER R. MANSFIELD,
Circuit Judges,

UNITED STATES COURT OF APPEALS
FILED
JUN 7 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ELDAD W. BROPHY, Husband,
Plaintiff-Appellee,

v.

THE STATE OF NEW HAMPSHIRE, GRAPER AND SWANSON, PROFESSIONAL ASSOCIATION, and as individuals, and ANN BROPHY, Wife,
Defendants-Appellees.

77-7154

77-7154

Appeal from the United States District Court for the District of Vermont.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the basis of the memorandum opinion of James S. Holden, J., dated February 2, 1977.

Irving R. Kaufman
IRVING R. KAUFMAN

Robert P. Anderson
ROBERT P. ANDERSON

Walter R. Mansfield
WALTER R. MANSFIELD

BEST COPY AVAILABLE

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Norman J. Bernstein Plaintiff	)	
v.	)	Civil Action File No. 76-212
State of Florida Raymond E. Rhodes, Clerk and Individually Alban E. Brooke Donald S. Reisman Marguerite H. Bernstein Defendants	)	

MEMORANDUM AND ORDER

With much religious zeal as a "reborn Christian" the plaintiff has commenced this action pro se against the State of Florida; Raymond E. Rhodes, the Clerk of the First District Court of that state; Alban E. Brooke, his former wife's attorney in a Florida divorce proceeding; Donald S. Reisman, his own counsel; and his former wife, Marguerite H. Bernstein. The principal allegation is to the effect that a judgment of divorce in Florida proceedings, in which all the defendants participated, violated his rights protected by the First and Fourteenth Amendments to the United States Constitution. It appears that the plaintiff is now a citizen of Vermont; all defendants, save the State of Florida, are citizens of that state and were served by summons in that jurisdiction. The State of Florida, by its Attorney General, and the defendants Brooke and Bernstein have moved to dismiss the action for want of personal and subject matter jurisdiction and improper venue.

The plaintiff seeks a judgment declaring the divorce laws of Florida to be unconstitutional and his divorce to be null and void. He asks money damages against the State, the defendant Rhodes and the two attorneys, and a judgment encouraging reconciliation of the spouses "to restore the parties to their lawful and Godly position as husband and wife." He also seeks temporary and permanent injunctive relief to support any decree the court might award.

Bernstein's case regarding the unconstitutionality of the Florida divorce laws is not explained. His claim against the clerk of the Florida court resides in Rhode's alleged frustration of an appeal from the divorce decree. Brooke, it is claimed, discouraged reconciliation, maintained that marital counselling had taken place, when in fact it

had not, encouraged the state court and its clerk to dismiss Bernstein's appeal for lack of prosecution, and so on. The claim against Reisman is essentially one of malpractice, charging that his attorney failed to perfect an appeal from the divorce decree. The action against the plaintiff's wife is concluded by references to the New Testament forbidding divorce.

The motion to dismiss the action against the State of Florida is well founded. The claim for damages is precluded by the Eleventh Amendment. **Edelman v. Jordan**, 415 U.S. 651 (1974). The prayer for injunctive relief fails to come within the exception permitted by **Ex Parte Young**, 209 U.S. 123, 156 (1908), since no executive officer of the state is made a party. The defendant Rhodes, clerk of the Florida district court, as an officer of the court is within the protection of judicial immunity. See **Davis v. McAteer**, 431 F.2d 81 (8th Cir. 1970); **Stewart v. Minnick**, 409 F.2d 826 (9th Cir. 1969); **Sullivan v. Kelleher**, 405 F.2d 486 (1st Cir. 1968).

It appears that none of the defendants were served or found within the State of Vermont. The service effected fails to come within the provisions of Fed.R.Viv.P. 4(E), 12 V.S.A. § 913, since none of the defendants were within the reach of Vermont's long arm statute according to the teaching of **Hansen v. Denckla**, 357 U.S. 235, 251 (1958); **Pennoyer v. Neff**, 95 U.S. 714 (1877); **Avery v. Bender**, 126 Vt. 342, 345 (1967). Since the action is not based entirely on diversity and the claim did not arise in this district, the action fails to meet the venue requirements imposed by U.S.C. § 1391 (a).

There is another more formidable lion in the path of this action that has not been stressed by the defendants. In **Barber v. Barber**, 21 How. (62 U.S.) 582, 584 (1859), the Supreme Court disclaimed "altogether any jurisdiction in courts of the United States upon the subject of divorce."

Justice Field's opinion in **Pennoyer v. Neff, supra**, 95 U.S. at 734-35, observed:

> The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved.

The view has been more recently confirmed in **Sosna v. Iowa**, 419 U.S. 393, 404 (1975). **See also Bossom v. Bossom**, __ F.2d __ (2d Cir. Slip op. No. 76-7316, Dec. 17, 1976).

On each and all of these considerations the action must be dismissed. The Clerk will enter an order to accomplish this result.

Dated at Rutland, in the District of Vermont, this 1st day of February, 1977.

(s) James S. Holden
Chief Judge

Appendix D

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Eldad Brophy, Husband	)	
	)	Civil Action
v.	)	
	)	File No. 76-224
State of New Hampshire	)	
Graper & Swanson, Professional Association and as Individuals	)	
Ann Brophy, Wife	)	

MEMORANDUM AND ORDER

The complaint in this action is similarly stated to that in **Bernstein v. State of Florida**, Civil Action No. 76-212. It is drafted by the same hand in behalf of Eldad Brophy, "a resident pro tem of the State of Vermont" — who is a "Born Again Christian," allegedly victimized by the divorce laws of the State of New Hampshire. He seeks to have a divorce granted in New Hampshire declared null and void and asks for monetary damages and injunctive relief. All defendants have moved to dismiss the action on grounds similar to those advanced in **Bernstein v. Florida**.

For the reasons stated in the court's memorandum in **Bernstein v. Florida**, the motions of the defendants are granted. The motions of the defendants State of New Hampshire and Graper & Swanson for attorney's fees are denied for the reason that the court specifically indicated to the defendants that they were not required to argue the motions orally and the court would consider their respective motions on the written briefs. The Clerk will enter an order dismissing the action. It is SO ORDERED.

Dated at Rutland, in the District of Vermont, this 1st day of February, 1977.

(s) James S. Holden
Chief Judge

Appendix E

HOLY BIBLE

Mark 10: 1-12

1. And he arose from thence, and cometh into the coast of Judaea by the farther side of Jordan: and the people resort unto him again; and, as he was wont, he taught them again.
2. And the Pharisees came to him, and asked him, Is it lawful for a man to put away his wife? tempting him.
3. And he answered and said unto them, What did Moses command you?
4. And they said, Moses suffered to write a bill of divorcement, and to put her away.
5. And Jesus answered and said unto them, For the hardness of your heart he wrote you this precept.
6. But from the beginning of the creation God made them male and female.
7. For this cause shall a man leave his father and mother, and cleave to his wife;
8. And they twain shall be one flesh: so then they are no more twain, but one flesh.
9. What therefore God hath joined together, let not man put asunder
10. And in the house his disciples asked him again of the same matter.
11. And he saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her.
12. And if a woman shall put away her husband, and be married to another, she committeth adultery.

Supreme Court, U. S.
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IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1977

No. 77-355

ELDAD W. BROPHY, Husband,
Petitioner

v.

STATE OF NEW HAMPSHIRE
GRAPER & SWANSON,
Professional Association and
as Individuals
ANN BROPHY, Wife

BRIEF IN OPPOSITION TO CERTIORARI

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Attorney General

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General
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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit and the order and opinion of the United States District Court for the District of Vermont are printed as Appendices A, B & C to the Petition for Writ of Certiorari.

JURISDICTION

Petitioner has met the time requirements of 28 U.S.C. §2101(c) and has adequately invoked 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. First Amendment to the United States Constitution

2. Eleventh Amendment to the United States Constitution

3. Fourteenth Amendment to the United States Constitution

4. 28 U.S.C. §1391(a)

5. 28 U.S.C. §1391(b)

6. New Hampshire RSA Chapter 458

QUESTIONS PRESENTED

1. Was Petitioner's Complaint properly dismissed for lack of personal jurisdiction over the State of New Hampshire?

2. Was Petitioner's Complaint properly dismissed because venue does not rest in the District of Vermont?

3. Should Petitioner's Complaint have been dismissed for failure to state a claim upon which relief can be granted?

STATEMENT OF THE CASE

On October 19, 1976 the Petitioner, Eldad Brophy, filed a complaint in the United States District Court for the District of Vermont, seeking to have the

Court declare New Hampshire divorce laws unconstitutional, declare his divorce null and void, and order reconciliation between himself and his former wife. He also asked for damages against the State of New Hampshire in the amount of $10,000,000 and against Graper and Swanson, Professional Association, and Glen E. Graper and Dale L. Swanson, individually in the amount of $2,000,000.

Petitioner's complaint against the State of New Hampshire alleges that the authorization for divorce in New Hampshire RSA Chapter 458 violates his constitutional rights under the First and Fourteenth Amendments and other statutory and civil rights which are not specified.

Petitioner alleges that he is a "resident pro tem" of the State of Vermont. He does not allege that he is a resident of that state. The respondents Ann Brophy, Glen E. Graper and Dale L. Swanson are all New Hampshire residents. Graper and Swanson, Professional Association, is a corporation organized under the laws of the State of New Hampshire.

All of the respondents filed timely motions to dismiss for lack of jurisdiction, improper venue, and failure to state a claim upon which relief could be granted. Chief Justice James S. Holden granted the dismissal on February 2, 1977 on the grounds of lack of jurisdiction and improper venue. On June 7, 1977, the United States Court of Appeals for the Second Circuit summarily affirmed the District

Court's order. On September 6, 1977 Petitioner filed his Petition for a Writ of Certiorari with the Supreme Court of the United States.

ARGUMENTS OPPOSING CERTIORARI

It is well established that review on writ of certiorari is a matter of judicial discretion and that the Court's discretion will only be exercised where there are special and important reasons therefor. Rule 19 of the Rules of the United States Supreme Court. There are no important reasons for granting certiorari in this case. As far as respondent State of New Hampshire can determine, the decision in this case with respect to the questions of jurisdiction and venue are entirely consistent with decisions of other courts

of appeals and of this Court.

There are no important questions of federal law which have not been, but should be, settled by this Court. Petitioner's freedom of religion is not even remotely in jeopardy here. The State of New Hampshire has done nothing either to establish a religion or to restrict Petitioner's practice of religion. By enacting divorce laws, it has merely defined a procedure by which those of its citizens who so desire may dissolve marriages.

Petitioner's Fourteenth Amendment claims are equally without merit. He has alleged no facts which even remotely relate to either the privileges and immunities clause or the due process clause of the Fourteenth Amendment.

With respect to jurisdictional deficiencies, the question of the Eleventh Amendment limitation on the grant of jurisdiction to federal courts has already been decided and need not be reconsidered. Edelman v. Jordan, 415 U.S. 651 (1974), reh. den. 416 U.S. 1000; Ford Motor Co. v. Department of Treasury of the State of Indiana, 323 U.S. 459 (1945), Ex Parte Young, 209 U.S. 123 (1908). The venue requirements set forth in 28 U.S.C. §1391(a) and (b) are patently unambiguous and present no important question of law which this Court must decide. The fact that venue not based solely on diversity of citizenship rests in the district where all defendants reside or in which the claim arose is well

settled and need not be considered by this Court. Alternatively, venue predicated sòlely on diversity cannot rest in a district where none of the parties reside. Luckett v. Delpark, Inc., 270 U.S. 496 (1926).

It is interesting to note that Petitioner does not contest the venue and jurisdictional deficiencies but merely states that they are not "practical" and "real" to this case. Respondent knows of no such standard for rejecting clearly applicable and well established principles of law.

In summary there is no need for this Court to exercise its power of supervision over the courts below. Petitioner's claim is patently frivolous, and the Court should deny certiorari.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

David H. Souter
Attorney General

Edward A. Haffer
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-355

NORMAN J. BERNSTEIN, Husband,

Petitioner,

vs.

STATE OF FLORIDA, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SECOND CIRCUIT

ROBERT L. SHEVIN
Attorney General

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Chief Trial Counsel

JOSEPH W. LAWRENCE, II
Assistant Attorney General

Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-355

NORMAN J. BERNSTEIN, Husband,

Petitioner,

vs.

STATE OF FLORIDA, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SECOND CIRCUIT

A.

QUESTIONS PRESENTED

Respondents, STATE OF FLORIDA and RAYMOND E. RHODES, Clerk and individually, disagree with Petitioner's statement of the questions presented, and submit that the following questions are presented:

1. Whether the State of Florida is a "person" in a civil rights suit brought

pursuant to 42 U.S.C. Section 1983, and whether this suit is barred by the Eleventh Amendment.

2. Whether the Clerk of a Florida District Court of Appeal, acting within the scope of his official duties, is protected from a civil rights suit by virtue of the doctrine of judicial immunity.

3. Where the action arose in the State of Florida and all individual defendants reside in Florida, do venue and personal service requirements permit filing and prosecution of a civil suit in the United States District Court for the District of Vermont.

B.

STATEMENT OF THE CASE

This is a suit by Norman J. Bernstein, petitioner, who claims that a judgment of divorce in a Florida proceeding violated his rights protected by the First and Fourteenth Amendments to the United States Constitution. At the time of his Complaint Petitioner was a citizen of Vermont. All Respondents, except the State of Florida, are citizens of said state, and all Respondents were served by summons within the territorial jurisdiction of the State of Florida.

Petitioner Bernstein, through his Complaint, seeks a judgment declaring the divorce laws of Florida to be unconstitutional, and his divorce obtained in that

state to be null and void. Further, Petitioner seeks money damages against the State of Florida, Clerk of Court and the two respondent attorneys. Additionally, Petitioner seeks a judgment encouraging reconciliation of the former spouse "to restore the parties to their lawful and godly position as husband and wife."

C.

ARGUMENT

Petitioner Bernstein has offered this Court no cogent legal arguments for the Court to review the decision of the Second Circuit Court of Appeal in the case. Furthermore, it is manifest from a review of Petitioner's Petition for Writ of Certiorari that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, the Petitioner having failed to disclose to this Court any sound ground why the cause should be reviewed.

It should first be noted that this Court has disclaimed altogether any jurisdiction in the courts of the United States upon the subject of divorce. Justice Fields observed in Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1877):

> The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created

> and the causes for which it may be dissolved. 95 U.S. at 734-5.

See also Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975).

The State of Florida is not subject to suit pursuant to 42 U.S.C. Section 1983 because states are not "persons" within the meaning of said section. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). Additionally, it is well settled that the Eleventh Amendment to the United States Constitution precludes suits by citizens of claims for damages against unconsenting states. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974); Parden v. Terminal Ry. of Alabama States Docks Dept., 377 U.S. 184, 84 S.Ct. 1903, 12 L.Ed.2d 233 (1964). Petitioner's request for injunctive relief against the State of Florida is barred since no executive officer is named as a party. Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

Petitioner's claim for damages against Respondent Rhodes, as Clerk of the Florida District Court of Appeal, for rudeness must also fail. The claim is against the Respondent for acts done within the realm of his official duties as Clerk and are clothed with judicial immunity to the extent of damage actions. Davis v. McAteer, 431 F.2d 81 (8th Cir. 1970).

Finally, Petitioner brought his Complaint in the United States District

Court of Vermont, whereas all Respondents-Defendants were citizens of and domiciled in the State of Florida. None of the Respondents were within the reach of the State of Vermont's long arm statute, the Respondents' activities having no nexus with that state and the Petitioner having failed to allege said nexus. Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

It is readily apparent from the Petition for Writ of Certiorari previously filed that Petitioner has not even attempted to demonstrate to this Court sound legal argument concerning the jurisdictional hurdles to bringing the Complaint now at issue. Petitioner's argument can be restated that he is personally, socially and religiously opposed to divorce, with numerous citations to the Holy Bible. It is well settled that the federal judiciary should abstain from such policy arguments.

CONCLUSION

Therefore, Respondents, State of Florida and Raymond E. Rhodes, respectfully submit that the questions upon which this cause depend are so unsubstantial as not to need further argument. Respondents move this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

William C Sherrill Jr

WILLIAM C. SHERRILL, JR.
Chief Trial Counsel

JOSEPH W. LAWRENCE, II
Assistant Attorney General

Department of Legal Affairs
Civil Division
The Capitol
Tallahassee, Florida 32304
904/488-1573

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeal for the Second Circuit was forwarded, by U. S. Mail, to NORMAN J. BERNSTEIN, ESQUIRE, Thompsonburg, Londonderry, Vermont 05148, on this 27 day of September, 1977.

William C Sherrill Jr
WILLIAM C. SHERRILL, JR.